



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAVAD SIDDIQI,

Petitioner,

v.

THE SUPREME COURT OF THE
STATE OF CALIFORNIA,

Respondent.

Case No. 2:19-cv-01147-GW-MAA

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE**

I. INTRODUCTION

On February 12, 2019, Petitioner Javad Siddiqi filed a Petition for Writ of Coram Nobis. (“Petition,” ECF No. 1.) Invoking 28 U.S.C. § 1651(a), Petitioner seeks a writ of coram nobis to remedy the collateral consequences of his criminal conviction in state court. (*See id.* at 7.) Petitioner claims that he pleaded no contest to misdemeanor sexual assault without having been advised that he would have to register as a sex offender for the rest of his life. (*See id.* at 8-9.)

For the reasons stated below, whether the Petition is construed as a petition for writ of error coram nobis, a petition for writ of habeas corpus, or a motion pursuant to Federal Rule of Civil Procedure 60(b), the Petition is subject to summary dismissal.

1 **II. DISCUSSION**

2 **A. Writ of Coram Nobis**

3 “[T]he writ of error coram nobis is a highly unusual remedy, available only
4 to correct grave injustices in a narrow range of cases where no more conventional
5 remedy is applicable.” *United States v. Riedl*, 496 F.3d 1003, 1005 (9th Cir. 2007).
6 This extraordinary remedy may be available in post-conviction proceedings in
7 federal criminal cases in which no other relief is available. *See Hirabayashi v.*
8 *United States*, 828 F.2d 591, 604 (9th Cir. 1987). However, “[c]oram nobis relief is
9 not available in federal court to attack a state court conviction.” *Casas-Castrillon v.*
10 *Warden*, 265 F. App’x 639, 640 (9th Cir. 2008); *see also Hensley v. Municipal*
11 *Court*, 453 F.2d 1252, 1252 n.2 (9th Cir. 1972) (declining to treat petition as
12 seeking coram nobis relief because the petitioner sought “to challenge a state court
13 proceeding in federal court”), *rev’d on other grounds*, 411 U.S. 345 (1973); *cf.*
14 *Finkelstein v. Spitzer*, 455 F.3d 131, 134 (2d Cir. 2006) (collecting circuit court
15 decisions ruling that “district courts lack jurisdiction to issue writs of *coram nobis*
16 to set aside judgments of state courts”).

17 Further, coram nobis relief may be sought only from the court whose ruling
18 is being challenged. *See, e.g., United States v. Montreal*, 301 F.3d 1127, 1131 (9th
19 Cir. 2002) (“A writ of error *coram nobis* attacking [a] conviction may only be
20 brought in the sentencing court.”); *Madigan v. Wells*, 224 F.2d 577, 578 n.2 (9th
21 Cir. 1955) (“[T]he writ can issue, if at all, only in aid of the jurisdiction of
22 the . . . court in which the conviction was had.”); *cf. United States v. Morgan*, 346
23 U.S. 502, 505 n.4 (1954) (A petition for writ of error coram nobis “is a step in the
24 criminal case and not, like habeas corpus where relief is sought in a separate case
25 and record, the beginning of a separate civil proceeding.”).

26 Here, the Petition challenges the rulings of the California state courts relating
27 to collateral consequences from a California state-court conviction. (*See* Petition at
28 7-9.) Accordingly, coram nobis relief is unavailable in this federal court because

1 (1) federal *coram nobis* relief is not available to remedy the collateral consequences
2 of Petitioner’s state-court conviction, and (2) this federal district court is not the
3 state court whose ruling Petitioner challenges.

4 Moreover, Petitioner fails to allege a basis for federal jurisdiction to the
5 extent Petitioner invokes the All Writs Act, 28 U.S.C. § 1651(a). “[T]he All Writs
6 Act empowers federal courts only to act to preserve their jurisdiction, which
7 jurisdiction must have independent source in the law” *Rendall v. Carey*, No. C
8 02-0568 WHA (PR), 2002 U.S. Dist. LEXIS 10933, at *5 n.3, 2002 WL 1346354,
9 at *2 n.3 (N.D. Cal. May 31, 2002) (citing *Jackson v. Vasquez*, 1 F.3d 885, 888-89
10 (9th Cir. 1993)). The All Writs Act “is not itself a source of jurisdiction.” *Chavez*
11 *v. Superior Court*, 194 F. Supp. 2d 1037, 1039 (C.D. Cal. 2002) (rejecting use of
12 All Writs Act to support jurisdiction over petition for writ of error *coram nobis*).
13 “Thus, a federal district court has no jurisdiction under the All Writs Act to
14 entertain a petition for writ of error *coram nobis* attacking a state conviction.”
15 *Young v. People*, No. CV 18-2208-AG(E), 2018 U.S. Dist. LEXIS 57660, at *3,
16 2018 WL 1662506, at *2 (C.D. Cal. Mar. 22, 2018).

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18 **B. Writ of Habeas Corpus**

19 Were the Court to construe the Petition as one seeking a writ of habeas
20 corpus, the Petition would have to be dismissed because Petitioner has not shown
21 he is in custody. Rule 4 of the Rules Governing Section 2254 Cases in the United
22 States District Courts requires summary dismissal of federal habeas petitions “[i]f it
23 plainly appears from the petition and any attached exhibits that the petitioner is not
24 entitled to relief in the district court.” A federal court may grant relief pursuant to
25 28 U.S.C. § 2254 to “a person *in custody* pursuant to the judgment of a State court.”
26 28 U.S.C. § 2254(a) (emphasis added). The “*in custody*” requirement is a
27 jurisdictional one. *See Resendiz v. Kovensky*, 416 F.3d 952, 956 (9th Cir. 2005).
28 “[O]nce the sentence imposed for a conviction has completely expired, the

1 collateral consequences of that conviction are not in themselves sufficient to render
2 an individual ‘in custody’ for the purposes of a habeas attack upon it.” *Maleng v.*
3 *Cook*, 490 U.S. 488, 492 (1989); *accord Resendiz*, 416 F.3d at 956 (“[F]ederal
4 courts lack jurisdiction over habeas corpus petitions unless the petitioner is ‘under
5 the conviction or sentence under attack at the time his petition is filed.’” (quoting
6 *Maleng*, 490 U.S. at 490-91)). California’s sex offender registration requirement,
7 California Penal Code § 290, does not render a habeas petitioner “in custody” when
8 a petition is filed after a convict is released from prison and discharged from
9 probation or parole. *See Henry v. Lungren*, 164 F.3d 1240, 1241-42 (9th Cir. 1999)
10 (holding that “the registration requirement is merely a collateral consequence of
11 conviction” that is alone insufficient to render an individual “in custody”).

12 Petitioner implicitly admits in the Petition that he is not in custody. (*See*,
13 *e.g.*, Petition at 7 (noting that coram nobis relief, not habeas corpus relief, is
14 available to “a criminal defendant out of custody”). *Cf. Montreal*, 301 F.3d at 1131-
15 32 (9th Cir. 2002) (describing a writ of error coram nobis, which Petitioner
16 expressly seeks in this proceeding, as a remedy “available only to petitioners who
17 have fully served their sentences”). Petitioner does not allege that he is in jail or on
18 probation; although Petitioner was sentenced to six days in county jail and a three-
19 year period of probation, Petitioner was sentenced in 2008, and the custodial term
20 apparently has elapsed. (*See* ECF No. 1-1, at 28 (outlining terms of sentence); ECF
21 No. 1-2, at 30 (declaring Petitioner lives in a neighborhood, works freelance jobs,
22 and is “in society,” all statements indicating Petitioner is not incarcerated or
23 otherwise in custody).) Petitioner merely avers that he is subject to periodic re-
24 registration as a sex offender (*e.g.*, Petition at 12), which the Ninth Circuit
25 expressly held does not alone fulfill the “in custody” requirement. *See Henry*, 164
26 F.3d at 1242 (“Registration, even if it must be done in person at the police station,
27 does not constitute the type of severe, immediate restraint on physical liberty
28 necessary to render a petitioner ‘in custody’ for the purposes of federal habeas

1 corpus relief.”). The Court concludes that it plainly appears from the face of the
2 Petition that Petitioner is not in custody and, therefore, is not entitled to federal
3 habeas relief. Therefore, dismissal pursuant to Rule 4 of the Section 2254 Rules is
4 appropriate.

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6 **C. Federal Rule of Civil Procedure 60(b)**

7 Were the Court to construe the Petition as a motion for relief from judgment
8 pursuant to Federal Rule of Civil Procedure 60(b), jurisdiction would be lacking.
9 “[N]either Rule 60(b) *per se* nor, for that matter, any other of the Federal Rules of
10 Civil Procedure was ever designed to apply to proceedings in other than the United
11 States District Courts.” *Washington-Baltimore Newspaper Guild, Local 35 v.*
12 *Washington Post Co.*, 442 F.2d 1234, 1239 (D.C. Cir. 1971) (citing Fed. R. Civ. P.
13 1). “While Rule 60(b) can be used to relieve a party from a final judgment, order,
14 or proceeding issued by the United States District Court, it cannot be used to relieve
15 [a petitioner] of an order, judgment or proceeding issued by a state court”
16 *Smallling v. Arizona*, No. CV 09-1062-PHX-MHM (DKD), 2009 U.S. Dist. LEXIS
17 67272, at *5, 2009 WL 2177318, at *2 (D. Ariz. July 21, 2009). A motion pursuant
18 to Rule 60(b) is not an appropriate vehicle for Petitioner’s challenge to his state-
19 court criminal conviction, and the Court lacks jurisdiction to entertain the motion.
20 *See id.* (denying Rule 60(b) motion for lack of jurisdiction).

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1 **III. CONCLUSION**

2 IT IS THEREFORE ORDERED that judgment be entered summarily
3 dismissing this action without prejudice.

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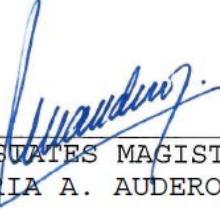
5 DATED: March 4, 2019

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8 GEORGE H. WU
9 UNITED STATES DISTRICT JUDGE

10 Presented by:

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13 UNITED STATES MAGISTRATE JUDGE
14 HON. MARIA A. AUDERO

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